IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 814 OF 2000

Machindra Tukaram Rakhapasre,]
Yerawada Central Prison, Pune] .. Appellant (Ori. Accused No.1)

versus

The State of Maharashtra,]
(at the instance of Loni Kalphor Police Station.] .. Respondents

Mr. Abhay Kumar Apte for the appellant.

P.P. For the respondents-State.

ALONGWITH

CRIMINAL APPEAL NO. 692 OF 2000

1. Mr. Suresh Laxman Bhale,]
   aged about 28 years, Occu: Labour,]

2. Mr. Sukhdeo Laxman Bhale,]
   aged about 27 years, Occu: Labour,]

3. Mr. Nana Laxman Bhale,]
   aged about 25 years, Occu: Labour,]

   All residing at Garudi Vasti, Loni Kalbhor,]
   Tal. Haveli, Dist: Pune]
   (At present in Yerawada Central Prison.)] .. Appellants (Ori. Accused Nos. 2 to 4)

Versus

State of Maharashtra.] .. Respondents

Mrs. Teja Katdare with Mr. S.B. Deshpande for the appellants.

P.P. For the State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 7TH SEPTEMBER, 2004.

COMMON ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellants in these Appeals were prosecuted for the murder of Vasant Bhale and were convicted for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced to suffer life imprisonment by the Additional Sessions Judge, Pune. Therefore, these two Appeals by the appellant-accused against the judgment dated 15th September 2000 of conviction.

2. Original accused No.2 to 4 are the appellants in Criminal Appeal No.682 of 2000. Accused No.1 is the appellant in Appeal No. 814 of 2000. As these two Appeals are arising out of the common judgment and record, we have

heard these Appeals together and, therefore, this common judgment.

3. The Additional Sessions Judge, Pune, held that on 26th October 1999 at about 8.30 p.m. at Survey No. 150 on an *Ota* opposite the house of the complainant Smt. Leelabai Vasant Bhale (PW6) at Garudi Vasti, Loni Kalbhor, District Pune, all the appellants-accused either individually or in furtherance of their common intention, committed the murder of one Vasant and, therefore, convicted and punished them. The complainant Leelabai, wife of Vasant Bhale (hereinafter "deceased"), has lodged the complaint at Exhibit-38, which was recorded at Sassoon Hospital, Pune. As narrated, accused No.1 Machindra Tukaram Rakhpasare @ Kale, on 26th October 199 at about 8.00 p.m. when the complainant and her deceased husband were sitting on the threshold in front of their house after taking their meals. All the accused, at about 8.30 p.m., arrived at the spot and enquired with the deceased Vasant "*Vashya Baslas Ka?*". To that, the deceased replied "*Aare Machya Me Baslo Aahe.*". Suddenly, accused No.1 removed the instrument which is like a *Sura* and gave the blow with the said weapon on the throat of the deceased Vasant and because of the said injury, the blood started oozing. All the accused ran away from the spot. The complainant cried loudly and Prabhu Kasbe, Vishnu Bhale, Manik Ragpasare rushed to the spot, being persons from the same vicinity and lifted the deceased Vasant and

took him to the hospital. As the doctor was not available, the deceased was taken to the Sassoon Hospital as per the directions of the Police. The doctor at Sassoon Hospital Dr. Prashant Patil (PW9) declared Vasant `dead'. The Complaint (Exhibit-38) dated 20th October 1999 was, therefore, lodged and registered the offence under Crime No. 287 of 1999 of Loni Kalbhor Police Station under Section 302 read with Section 34 IPC against all the accused. She also narrated that the accused No.1 Machindra was residing in the vicinity of the complainant. The deceased was arrested and convicted in the Sessions case for committing the murder of Ashabai Zende, sister of the accused No.1, six years prior to this incident. However, the deceased husband of the complainant was acquitted by the appellate Court one to two months before the present incident. Accused No.1, therefore, had grievance against the deceased for committing the murder of his sister. The investigation commenced accordingly.

4. All the accused were arrested on 27th October, 1999. The Police has investigated the case and drawn the Panchanamas of Inquest (Exhibit-19), Spot/ Place of Incident (Exhibit-31), clothes of the deceased (Exhibit-20), clothes over Bapu Kasbe (Exhibit-21) and the inventory from the house of the accused Sukhdeo and Nana under Panchanama (Exhibit-33), Post Mortem Notes (Exhibit-43) which shows the cause of death as “shock due to cut-throat injury”.

5. At the instance of the accused No.1, article 14, the knife was also discovered and accordingly, Memorandum Panchanama (Exhibit-35 A & B) was drawn. The muddemal property/relevant property was sent to the Chemical Analyzer vide Exhibit-53 and the Report is filed at Exhibit-54. Police has recorded the statements of the witnesses. The charge sheet was filed. The trial was committed to the Court of Sessions, Pune, after following the procedure under Section 209 of the Criminal Procedure Code. The charges were denied by the accused and they pleaded “not guilty”. No defence evidence was led. Even initially permission was sought to do the same by filing Pursis (Exhibit-58). The prosecution has examined 7 witnesses. The statements of the accused were recorded under Section 31 of the Criminal Procedure Code. The learned Sessions Judge, after considering the evidence and the material placed on the record by the prosecution, passed the impugned judgment of conviction.

6. The complainant (PW6) Leela Vasant Bhale, the wife of the deceased, is the main witness and had lodged the complaint (Exhibit-38). She deposed that accused No.1 gave the blow on the throat of Vasant by a *suri* (article 14) while Suresh, Sukhdeo and Nana – accused Nos. 2 to 4, caught hold of her deceased husband. The deceased died on the spot because of the said

injuries on his neck. All the accused ran away from the spot. Blood was oozing from the throat injury. The complainant and one Bapu Kasbe, Hirabai Bhale and Subhash Rama Kasbe had taken the deceased to the Sassoon Hospital, Pune in a jeep. The Medical Officer Prashant Patil (PW9) declared him dead, after due examination. The complainant's statement was recorded at the Sassoon Hospital and her thumb impression was taken after reading the said complaint by the Police to her. She also deposed that she knows all the accused-appellants. In her cross-examination, she further replied that she and her husband were only present at the threshold of their house at the time of the incident. All the accused reached the spot at once. She denied the suggestions put by the defence lawyer. The complainant's testimony, insofar as the incident part is concerned and specially the role played by the accused No.1 remained intact. She further endorsed Exhibit-38 written by the Police. Her testimony in respect of reaching Sassoon Hospital and lodging the complaint also remained untouched. There was no substantial cross-examination or suggestion made on behalf of the accused No.1 except the simple denial of the incident and/or assault. However, the complainant denied that her husband was prosecuted under Section 302 of the IPC. This does not corroborate one aspect as mentioned in the complaint by the wife of the deceased in respect of conviction of the deceased. It supports the theory that the deceased was acquitted by the appellate Court, two to three

months before the date of the incident. Therefore, this denial and/or no dispute between the accused and complainant' sfamily members, by that itself cannot overlook the basic testimony of the incident and the assault inflicted by the accused No.1. Accused Nos. 2 to 4 in their cross-examination were able to extract from the complainant that the persons from the complainant's vasti were doing the business of illicit liquor at their houses. She denied the suggestion that she had not disclosed at the time of recording the complaint that the accused Nos.2 to 4 had caught hold of her deceased husband and she also denied that she was taking the name of accused Nos.2 to 4 for the first time and she had not disclosed this incident to the Police at the hospital or Loni. She also denied that she was giving false evidence against accused Nos.2 to 4 due to *bhaubandi*. There was no other cross-examination or suggestion made or anything to support the defence was extracted from this witness. There is no doubt that she is an interested witness being the wife of the deceased. Her basic allegations of assault against accused No.1 remained undisturbed. This prosecution witness, therefore, substantially proved the case of deadly assault by accused No.1. This assault, as referred above, was intentional and accused No.1 knowingly caused this assault which resulted into the death of the deceased on the spot. As observed above, by Exhibit-38 deceased was acquitted from the charge of murder of the sister of accused No.1 before two to three months of the incident.

This material circumstance, read with the evidence of PW6, would substantiate the case of the prosecution that there was motive, at least of accused No.1, to kill the deceased. The learned Judge, according to us, therefore, rightly held that accused No.1 committed the murder of the deceased Vasant with full knowledge of its consequences and its effect. The reasoning given by the learned Judge on this aspect is, therefore, correct. The evidence of this material witness definitely shows the role played by the accused No.1 which is further corroborated with other evidence i.e. (PW7) Shobha Manik Shitole, apart from the other corroborative medical evidence of the injuries.

7. One Shobha Shitole (PW7) deposed that the quarrel took place between Leelabai (the wife of the deceased Vasant) and Ashabai Zende (the sister of accused No.1). The deceased Vasant had thrown the stone, which resulted into the death of the said Ashabai. The deceased was convicted initially. She further deposed that accused No.1 is her neighbour and 15 days to one month of the present incident, he had expressed that he would take revenge of the death of his sister Ashabai, if (the deceased) Vasant released from the jail. The accused No.1 was involved in the death case of one Sanjay Kalase. Therefore, he was absconding for a period of six months earlier to this incident. She further deposed that accused No.1 was passing from her house on 26th

October 1999 at about 8.00 p.m. She was watching the activities of accused No.1 without opening the door. The accused No.1 reached near the deceased Vasant. Deceased Vasant was in a sitting position relaxing against the wall of his house. The accused No.1 watched here and there and then gave the blow of the knife on the neck of deceased Vasant. She stated that the stab of the knife was given on the throat. The wife of the deceased Vasant was inside the house, she came outside the house later on. The accused No.1 returned back from the same way after giving the stab blow towards her house. Blood was oozing from the injury on the throat and people lifted Vasant and took him to the hospital. This witness was, however, declared hostile partly on the point of the presence of accused Nos.2 to 4. As permission was granted, the A.P.P. cross-examined this witness. She denied that she narrated before the Police that accused No.2 to 4 were also accompanied accused No.1, when accused No.1 reached near the house of the deceased. She stated that the portion marked “A” was not written as per her statement. She denied again that she was giving false evidence only to save accused Nos.2 to 4. In the cross-examination from the side of the accused No.1, she stated that she had cordial relations with the accused No.1. Accused Nos.2 to 4 are from the relation of Vasant Bhale. The distance between her house and the house of the deceased is near about 15 to 20 feet. She denied the suggestion that there are 50 houses in-between. In her cross-examination,

however, the role of Machindra-accused No.1 attacking the deceased with *sura* remained undisturbed. This also corroborates the evidence and the statement of (PW6) Leela Bhale, the complainant and wife of the deceased. These two witnesses, therefore, substantially proved the case of offence being committed by accused o.1 which caused the death of the deceased Vasant. The accused Nos.2 to 4, however, even though cross-examined, in no way extracted the case in support of the accused No.1. PW7 nowhere referred or deposed the presence of PW8 near the spot/place of incident.

8. The evidence of (PW8) Bapu Prabhu Kasbe also supports the case of the prosecution about the earlier dispute and conviction of the deceased for killing Ashabai. This over-enthusiastic witness was trying to supports the case of the prosecution in respect of all the accused. However, this witness also supports the case that the accused No.1 had removed *suri* and gave the blow on the throat of Vasant in a horizontal manner. This witness further deposed that he tried to catch hold of the accused, but they ran away. Thereafter, he lifted Vasant and took him to the hospital. In the cross-examination, he admits that the deceased was residing at his house prior to death. However, they were not on talking terms. They had common cooking at his house for sometime. This witness is also related to (PW6) Leelabai as the deceased was his maternal

uncle. This witness further deposed that his father had performed second marriage with the sister of accused Nos.2 to 4. He has denied all the suggestions put on behalf of accused Nos.2 to 4. This witness, therefore, again confirmed the case of assault by accused No.1 positively. The tenacity of this witness, as well as, the testimony shows that this witness cannot be totally believed insofar as accused Nos.2 to 4 are concerned. This witness, however, nowhere supports the case of the motive or intention of assault by the accused Nos.2 to 4. This witness contradicted the testimony of PW6 Leelabai so far as accused Nos.2 to 4 are concerned. This witness is again in contradiction with PW7 Shobha Shitole in respect of accused Nos.2 to 4. This contradiction, according to us, is sufficient to give benefit of doubt to the accused Nos.2 to 4. This witness (PW8) cannot be said to be a reliable witness. He admits his relation with the deceased as also his relation with accused Nos.2 to 4. The involvement of accused Nos.2 to 4, therefore, is in doubt. The consistency in the statement of all these witnesses is definitely against accused No.1 and not against accused Nos.2 to 4.

9. The cumulative effect of the two witnesses (PW6 & PW7), if taken into consideration, there are some inconsistencies and contradictions insofar as accused Nos.2 to 4 are concerned. PW6 is definitely an interested witness.

PW7 is not related or an interested witness. If the testimony of PW6 is taken note of, it is in contradiction insofar as involvement of the accused Nos.2 to 4 is concerned. The alleged role of accused Nos.2 to 4 is totally missing in the testimony of PW7. The complainant' stestimony, however, is not in conformity with the testimony of PW6 insofar as accused Nos.2 to 4 are concerned. PW7, even though declared hostile partly, her basic evidence would support the prosecution's case of assault by accused No.1 by *suri* and needs to be accepted. The accusation by these two witnesses goes to support the case of the prosecution insofar as accused No.1-Machindra is concerned. There is a corroboration to the effect that the accused No.1 came near the deceased and with the weapon (*suri)* inflicted the fatal stab injury on the throat of the deceased, which resulted into his death. Even though there is contradiction or omission insofar as accused Nos.2 to 4 are concerned, if we accept the testimony of PW6-complainant, then we have to discard the testimony of PW7, specially in regard to the presence of the complainant with the deceased at the relevant time. The complainant deposed that she was with the accused at the relevant time, whereas PW7 deposed that the deceased was alone. The death of Vasant and the injury caused and medically proved cannot be overlooked.

10. From the testimony of these three witnesses, one thing is very clear

and that is the role played by accused No.1. Some contradiction here or there, may not be sufficient to discard the testimony of these three witnesses. Therefore, according to us also, the conviction and sentences awarded against accused No.1 in Appeal No.814 of 2000 is correct and cannot be said to be perverse or contrary to the record or the evidence placed on the record.

11. One more aspect which is necessary to be mentioned here is about the recovery of weapon (article 14) at the instance of accused No.1 and merely because blood stains were not found on the said article, by that itself cannot be said that the said article (*suri)* was not used for the commission of the offence. This ground itself it not sufficient to discard the prosecution case. After going through the testimony and statements of the eye witnesses, even if there is some suspicion in the recovery of clothes or weapon, as contended, on that ground itself, no benefit can be given to the accused No.1. PW Nos.2 and 3, who are the panch witnesses on Exhibit Nos.32 and 33, were declared hostile, the above testimony of the two main witnesses cannot be overlooked merely because there were contradictions or omissions in respect of the role of the accused Nos.2 to 4 i.e. holding the deceased when accused No.1 was attacking.

12. At the same stroke, it is difficult to accept the conviction insofar as

accused Nos.2 to 4 are concerned in view of the above reasoning itself. There were no other witnesses who supported the case of accused Nos.2 to 4. We are, therefore, of the view that the prosecution failed to prove their cause insofar as accused Nos.2 to 4 are concerned.

13. In view of the testimony of PW 6, 7 & 8, as referred above, and in view of the contradiction and omissions in respect of accused Nos.2 to 4, it is not proved beyond doubt about the role of accused Nos.2 to 4 and including their presence at the spot and/or at the relevant time. The prosecution, according to us, failed to establish the guilt of accused Nos.2 to 4 beyond reasonable doubt. There is no material to support, beyond reasonable doubt, that the accused Nos.2 to 4 had an intention and/or there was common intention and had preplanned to kill the deceased. The sudden removal of *suri* by accused No.1 and sudden assault on the spot, in the absence of any motive, insofar as accused Nos.2 to 4 are concerned, is not sufficient to convict the accused Nos.2 to 4. As the presence of accused Nos.2 to 4 itself is in doubt, in view of the evidence of PW7, and also in view of the contradiction between PW6, PW7 & PW8.

14. It is difficult to believe that accused Nos.2 to 4 had shared the motive,

preparation and intention of accused No.1 who committed the actual assault on Vasant. The motive and intention of the accused No.1 against the deceased is substantially recorded in the complaint, as well as, in the evidence of the prosecution witness. We are of the view, therefore, that the trial Court was wrong in holding that there was sufficient evidence to connect accused Nos.2 to 4 with the alleged offence. On the contrary, they are entitled for the benefit of doubt. The Judgment is accordingly modified to the above extent. Accused Nos.2 to 4 are, therefore, acquitted.

15. There are no mitigating circumstances to interfere with the order of conviction and imposition of sentence in respect of accused No.1 i.e. there is no merit in the Appeal No. 814 of 2000.

16. In view of the above, the following order:

O R D E R :

(a) Appeal No.814 of 2000 is dismissed and the conviction and award of punishment against accused No.1 is confirmed.

(b) Appeal No.692 of 2000 is allowed. The judgment dated 15th

September, 2000, in respect of appellant Nos.1 to 3 i.e. accused Nos.2 to 4 in Sessions Case No.14 of 2000, is set aside. Accused Nos.2 to 4 are acquitted. They be released if not required in any other cases and their bail bonds be cancelled accordingly.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]